

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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ALAMEDA INVESTMENT COMPANY, a Corporation,  
HAWLEY INVESTMENT COMPANY, a Corporation, and PACIFIC NASH  
MOTOR COMPANY, a Corporation,  
Appellants,

vs.

JOHN P. McLAUGHLIN, Collector of Internal  
Revenue for the First District of California,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Northern District of California,  
Southern Division.

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FILED

FEB 2 - 1929

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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ALAMEDA INVESTMENT COMPANY, a Corporation,  
HAWLEY INVESTMENT COMPANY, a Corporation, and PACIFIC NASH  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
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DANA LATHAM, Esq., 410 Title Insurance Bldg.,  
Los Angeles,

THORNTON WILSON, Esq., Ray Building, Oak-  
land,

Attorneys for Plaintiffs.

UNITED STATES ATTORNEY, San Francisco,  
Attorney for Defendant.

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In the United States District Court for the North-  
ern District of California, Southern Division.

AT LAW—No. 17,765.

ALAMEDA INVESTMENT COMPANY, a Cor-  
poration, HAWLEY INVESTMENT COM-  
PANY, a Corporation, PACIFIC NASH  
MOTOR COMPANY, a Corporation,  
Plaintiffs,

vs.

JOHN P. McLAUGHLIN, Collector of Internal  
Revenue for the First District of California,  
Defendant.

COMPLAINT.

To the Honorable Judges of Said Court:

Come now the plaintiffs, Alameda Investment  
Company, Hawley Investment Company and Pa-

cific Nash Motor Company, corporations organized and existing under the laws of the State of California, and for cause of action against the defendant, John P. McLaughlin, allege:

## 1.

That the jurisdiction of this court is dependent upon a Federal question in that the case arises under a law providing for internal revenue, to wit: Section 240 of the Revenue Act of 1921 (42 Stat. L. 260).

## 2.

That the defendant, John P. McLaughlin, is United States Collector of Internal Revenue for the First District of the State of California, duly commissioned and acting pursuant to the laws of the United States, and resides and has his office in the City and County of San Francisco in [1\*] said State.

## 3.

That this action is brought against the defendant as an officer acting under and by authority of the Revenue Act of 1921, on account of acts done under color of his office and of the revenue laws of the United States, as will hereinafter more fully appear.

## 4.

That the plaintiff the Alameda Investment Company is and was at all times hereinafter mentioned a corporation duly organized and existing under and by virtue of the laws of the State of California and

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\*Page-number appearing at the foot of page of original certified Transcript of Record.



engaged in the business of owning and managing properties and securities, with its principal place of business and office in the city of Oakland, County of Alameda, in said State; that the plaintiff the Hawley Investment Company is and was at all times hereinafter mentioned a corporation duly organized and existing under and by virtue of the laws of the State of California and engaged in the business of owning and managing properties and securities, with its principal place of business and office in the city of Oakland, County of Alameda, in said State; that the plaintiff, the Pacific Nash Motor Company is and was at all times hereinafter mentioned duly organized and existing under and by virtue of the laws of the State of California and engaged in the business of buying and selling automobiles and automobile securities, with its principal place of business and office in the city of Oakland, County of Alameda, in said State.

## 5.

That at all times during the calendar year 1922 the plaintiff Alameda Investment Company had an authorized [2] and outstanding capital stock of five hundred thousand dollars (\$500,000.00), divided into two thousand five hundred (2,500) shares of the par value of two hundred dollars (\$200.00) each, all of which capital stock was owned or controlled by Stuart S. Hawley, an individual residing in Oakland, California, who was also plaintiff's president and general manager and in active management and control of all the affairs of plaintiff Alameda Investment Company.

## 6.

That at all times during the calendar year 1922 the said Stuart S. Hawley was also president and general manager and in active management and control of the affairs of the plaintiff Hawley Investment Company, and said Stuart S. Hawley owned and controlled all the authorized and outstanding capital stock of said corporation, consisting of two thousand five hundred (2,500) shares of the par value of one hundred dollars (\$100.00) each.

## 7.

That at all times during the calendar year 1922 said Stuart S. Hawley was president of and in active control of the affairs of the plaintiff Pacific Nash Motor Company, and said Stuart S. Hawley owned or controlled all the authorized and outstanding capital stock of said corporation, consisting of three thousand five hundred (3,500) shares of the par value of one hundred dollars (\$100.00) each.

## 8.

That all the stock of the plaintiff Alameda Investment Company, plaintiff Hawley Investment Company and plaintiff Pacific Nash Motor Company was owned by the same interests, to wit: said Stuart S. Hawley, and said corporations [3] were affiliated during all of the calendar year 1922, as provided by Section 240 of the Revenue Act of 1921, and entitled to file a consolidated return of income and to have their income tax liability computed upon the income of said three corporations plaintiff as a unit.

## 9.

That said three corporations plaintiff as a unit had no taxable net income for the calendar year 1922, but suffered a net loss of one hundred forty-four thousand two hundred eight dollars and ninety-four cents (\$144,208.94).

## 10.

That notwithstanding that the plaintiff Alameda Investment Company, the plaintiff Hawley Investment Company and the plaintiff Pacific Nash Motor Company as a unit suffered a net loss for the calendar year 1922 and were not individually or severally liable for any income tax, said plaintiff corporations through inadvertence and without knowledge that they were entitled to file a consolidated return of income on or about March 15, 1923, filed with the defendant separate returns of income for the calendar year 1922. As set forth in detail in said returns, the plaintiff Hawley Investment Company suffered a net loss for the year 1922 of thirty-six thousand two hundred eighty-four dollars and twenty-eight cents (\$36,284.28); the plaintiff Pacific Nash Motor Company suffered a net loss for the year 1922 of two hundred twenty-eight thousand six hundred twenty-six dollars and forty-two cents (\$228,626.42); and the plaintiff Alameda Investment Company derived a net income for the calendar year 1922 of one hundred twenty thousand seven hundred one dollars and seventy-six cents (\$120,701.76). [4]

Upon the separate return filed by the plaintiff Alameda Investment Company for the year 1922

its income tax liability was shown to be fifteen thousand eighty-seven dollars and seventy-two cents (\$15,087.72), which said income tax liability was paid by the plaintiff Alameda Investment Company to defendant under protest in four installments, as follows, to wit:

\$3,125.00	March 13, 1923
4,455.42	June 15, 1923
3,709.43	September 14, 1923
3,697.87	December 14, 1923.

11.

That thereafter the plaintiff Alameda Investment Company, the plaintiff Hawley Investment Company and the plaintiff Pacific Nash Motor Company learned that they were entitled to file a consolidated return of net income for the calendar year 1922 and for prior years and to have their income tax liability for the year 1922 and prior years computed as a unit; and on June 11, 1924, said corporations plaintiff applied to the Commissioner of Internal Revenue for permission to and they did file with the defendant consolidated returns of income for the years 1920, 1921 and 1922.

12.

On the same date, to wit, June 11, 1924, plaintiff Alameda Investment Company, plaintiff Hawley Investment Company and plaintiff Pacific Nash Motor Company filed with the defendant a claim for the refund of the tax amounting to fifteen thousand eighty-seven dollars and seventy-two cents (15,087.72) paid by the plaintiff Alameda

Investment Company to the defendant as aforesaid on a separate return of its net income for the year 1922. [5]

## 13.

That thereafter the Commissioner of Internal Revenue audited the separate and consolidated returns which the plaintiff corporations Alameda Investment Company, Hawley Investment Company and Pacific Nash Motor Company filed with the defendant as aforesaid, for the years 1920, 1921 and 1922, and determined as set forth in his letter of October 14, 1925, that the plaintiff Hawley Investment Company and the plaintiff Pacific Nash Motor Company should be permitted to file a consolidated return for the calendar year 1922, but that the plaintiff Alameda Investment Company was not so affiliated with the said plaintiff Hawley Investment Company and the plaintiff Pacific Nash Motor Company nor entitled to have its income included in said consolidated return.

## 14.

That thereafter the Commissioner of Internal Revenue examined the claim for refund which the plaintiffs filed as aforesaid for the refund of the tax amounting to fifteen thousand eighty-seven dollars and seventy-two cents (\$15,087.72) which the plaintiff Alameda Investment Company paid to defendant on its separate income for the calendar year 1922, and by letter dated June 29, 1926, rejected said claim for refund in its entirety, and neither the whole nor any part nor portion of said

[Title of Court and Cause.]

SUMMONS.

Action brought in said District Court and the Complaint filed in the office of the Clerk of said District Court, in the City and County of San Francisco.

DANA LATHAM,  
THORNTON WILSON,  
Plaintiffs' Attorneys.

The President of the United States of America,  
GREETING: To JOHN P. McLAUGHLIN,  
Collector of Internal Revenue for the First  
District of California, Defendant.

YOU ARE HEREBY DIRECTED TO APPEAR and answer the complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the Northern District of California, Second Division, within ten days after the service on you of this summons, if served within this county, or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract or they will apply to the Court for any other relief demanded in the complaint.

WITNESS the Honorable FRANK H. KER-  
RIGAN, Judge of said District Court, this 16th  
day of May in the year of our Lord one thousand

nine hundred and twenty-seven and of our independence the one hundred and fifty-second.

[Seal]

WALTER B. MALING,

Clerk.

By A. C. Aurich,

Deputy Clerk. [9]

United States Marshal's Office,  
Northern District of California.

I HEREBY CERTIFY that I received the within writ on the 16th day of July, 1927, and personally served the same on the 16th day of July, 1927, upon John P. McLaughlin etc., by delivering to, and leaving with John P. McLaughlin as Collector of Internal Revenue for the first District of California, said defendant named therein personally, at the City and County of San Francisco, in said District, a certified copy thereof, together with a copy of the complaint, attached thereto.

FRED L. ESOLA,

U. S. Marshal.

By GEO. H. BURNHAM,

Office Deputy.

San Francisco, July 16th, 1927.

[Endorsed]: Filed July 19th, 1927. [10]

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[Title of Court and Cause.]

DEMURRER TO COMPLAINT.

The defendant demurs to the complaint on file herein on the ground:

That the complaint does not state facts sufficient to constitute a cause of action.

WHEREFORE, defendant prays that plaintiffs take nothing by their said action but that the defendant recover his proper costs.

Dated: November 10, 1927.

GEO. J. HATFIELD,  
United States Attorney,  
Attorney for Defendant.

[Endorsed]: Filed Nov. 10th, 1927. [11]

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At a stated term of the Southern Division of the District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 28th day of November, in the year of our Lord one thousand nine hundred and twenty-seven. Present: The Honorable A. F. ST. SURE, District Judge.

[Title of Cause.]

MINUTES OF COURT—NOVEMBER 28, 1927—  
ORDER OVERRULING DEMURRER.

By consent, IT IS ORDERED that the demurrer to the complaint herein, be and the same is hereby overruled, with leave to answer within ten days  
[12]



[Title of Court and Cause.]

ANSWER TO COMPLAINT.

Comes now the defendant, John P. McLaughlin, and for answer to the complaint in the above-entitled action, admits, denies and alleges as follows:

I.

Admits the matters and things in Paragraph I of said complaint.

II.

Admits the matters and things in Paragraph II of said complaint.

III.

Admits the matters and things in Paragraph III of said complaint.

IV.

Admits the matters and things in Paragraph IV of said complaint.

V.

Defendant has no information or belief to answer the allegations of Paragraph V of said complaint, and therefore denies each and every allegation in said paragraph.

VI.

Defendant has no information or belief to answer the allegations of Paragraph VI of said complaint, and therefore denies each and every allegation in said paragraph.

VII.

Defendant has no information or belief to an-

swer the allegations of Paragraph VII of said complaint, and therefore denies each and every allegation in said paragraph. [13]

#### VIII.

Answering the allegations of Paragraph VIII of said complaint, said defendant denies that the plaintiff, Alameda Investment Company, a corporation, plaintiff, Hawley Investment Company, a corporation, and plaintiff, Pacific Nash Motor Company, a corporation, were owned by the same interest, to wit, by Stuart S. Hawley, and that said corporations were so closely affiliated during all of the calendar year of 1922 as would entitle them under the Provisions of Section 240 of the Revenue Act of 1921 to file consolidated returns of income and to have their income tax liability computed upon the incomes of said three (3) corporations, plaintiffs, as a unit, but contends that plaintiff, Alameda Investment Company, was, under the Revenue Act of 1921, obligated to file, and did file, a separate return of their income tax liability for the calendar year of 1922.

#### IX.

Defendant has no knowledge or information to answer defendant's allegations in Paragraph IX of said complaint, and for that reason denies each and every allegation in said paragraph.

#### X.

Defendant has no information or belief that the plaintiff, Alameda Investment Company, a corporation, plaintiff, Hawley Investment Company, a cor-

poration, and plaintiff, Pacific Nash Motor Company, a corporation, as a unit, suffered a net loss for the calendar year of 1922 and therefore denies that this is a fact.

Defendant denies that plaintiff, Alameda Investment [14] Company, a corporation, plaintiff, Hawley Investment Company, a corporation, and plaintiff, Pacific Nash Motor Company, a corporation, were not individually or severally liable for any income tax, but asserts that plaintiff, Alameda Investment Company, was individually and severally liable for its income tax for the calendar year of 1922.

Defendant denies that any tax returns whatsoever were filed by plaintiff corporations through inadvertence, and particularly alleges that for the calendar year of 1922 the individual and several returns of plaintiff corporations were not filed through inadvertence, but same were properly filed according to provisions of the Revenue Act of 1921.

Defendant admits that on or about March 15, 1923, plaintiff corporations filed with the defendant separate returns of income for the calendar year of 1922.

Defendant admits that, as set forth in detail in said returns, the plaintiff, the Hawley Investment Company, was alleged to have suffered a net loss for the year 1922 of thirty-six thousand two hundred and eighty-four and 28/100 (\$36,284.28) dollars; the plaintiff, Pacific Nash Motor Company, in said returns, was alleged to have suffered a net loss for the year 1922 of Two hundred and twenty-eight

thousand six hundred and twenty-six and 42/100 (\$228,626.42) dollars; and in said returns it was alleged plaintiff, Alameda Investment Company, derived a net income for the calendar year of 1922 of one hundred and twenty thousand seven hundred and one and 76/100 (\$120,701.76) dollars. [15]

Defendant admits that upon the separate return filed by the plaintiff, Alameda Investment Company, for the year 1922, its income tax liability was alleged to be fifteen thousand eighty-seven and 72/100 (\$15,087.72), and defendant admits that said alleged tax liability was paid by the plaintiff, Alameda Investment Company, to this defendant in four (4) installments, as follows, to wit:

\$3,125.00 Paid March 13, 1923;

4,455.42 Paid June 15, 1923;

3,709.43 Paid Sept. 14, 1923;

3,697.87 Paid Dec. 14, 1923.

Defendant asserts that all four (4) of these payments which were and should have been made by the plaintiff, Alameda Investment Company, under the provisions of the Revenue Act of 1921 and by virtue of a separate income tax liability return required to be filed under the provisions of said Act by said plaintiff, Alameda Investment Company.

## XI.

Answering the allegations in Paragraph XI of said complaint, defendant denies that plaintiff, Alameda Investment Company, plaintiff, Hawley Investment Company, and plaintiff, Pacific Nash Motor Company, were entitled to file a consolidated return of net income for the calendar year

1922 and for prior years and to have their income tax liability for the year 1922, and prior years, computed as a unit, but contends that the plaintiff, Alameda Investment Company, was, under the provisions of the Revenue Act of 1921, obligated to file an individual and several return of tax liability for the year 1922 and for prior years.

Defendant admits that said plaintiff corporations applied to the Commissioner of Internal Revenue for permission [16] to, and they did, file with the defendant, consolidated returns of income for the years 1920, 1921 and 1922.

XII.

Admits the matters and things in Paragraph XII of said complaint.

XIII.

Admits the matters and things in Paragraph XIII of said complaint.

XIV.

Admits the matters and things contained in Paragraph XIV of said complaint.

XV.

Answering the allegations in Paragraph XV of said complaint, said defendant denies that he erroneously and illegally collected, and is erroneously and illegally withholding from said plaintiff, Alameda Investment Company, said plaintiff, Hawley Investment Company and said plaintiff, Pacific Nash Motor Company said tax, but affirms that any taxes collected from any or all of plaintiff corporations were properly and legally collected by him.

Defendant denies that he is indebted to any of said plaintiffs in the sum of fifteen thousand and eighty-seven and 72/100 (\$15,087.72) or any other sum whatsoever, or for any interest whatsoever, but, on the other hand alleges that the sum of fifteen thousand and eighty-seven and 72/100 (\$15,087.72) dollars was properly and legally collected by defendant as United States Collector of Internal Revenue for the First District of California, from the plaintiff, Alameda Investment Company, and that defendant has never collected any income tax whatsoever from plaintiff, [17] Hawley Investment Company or plaintiff, Pacific Nash Motor Company, for the tax year 1922 and prior years computed as a unit or otherwise.

Defendant admits that no money whatsoever has been paid by defendant to plaintiffs, or any of them.

WHEREFORE defendant prays that plaintiffs take nothing by their said action, and that said defendant have judgment for proper costs and for such other and further relief as may be just and proper in the premises.

GEO. J. HATFIELD.

GEO. J. HATFIELD,

United States Attorney,

Attorney for Defendant. [18]

State of California,  
Northern District of California,  
City and County of San Francisco,—ss.

John P. McLaughlin, being first duly sworn, deposes and says:

That he is the defendant named in the foregoing answer; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated on information and belief and as to those matters that he believes it to be true.

JOHN P. McLAUGHLIN.

Subscribed and sworn to before me this 7th day of December, 1927.

[Seal] RAYMOND GASKINS,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires Sept. 20, 1931.

[Endorsed]: Filed December 7th, 1927. [19]

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[Title of Court and Cause.]

STIPULATION WAIVING JURY AND FOR  
SETTING OF TRIAL.

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective attorneys, Thornton Wilson Esq., of Oakland, California, and Messrs. Miller, Chevalier & Latham, of Los Angeles, California, for the plaintiffs, and George J. Hatfield, United States Attorney for the Northern District of California, for the defendant, that the above-named case may be set for trial on April 2, 1928, before the Court without a jury.

Dated March —, 1928.

THORNTON WILSON,  
MILLER, CHEVALIER & LATHAM.

By MELVIN D. WILSON,  
Attorneys for Plaintiff.

Dated March 24, 1928.

GEO. J. HATFIELD,  
United States Attorney,  
Attorney for Defendant.

Dated —, 1928.

[Endorsed]: Filed March 29th, 1928. [20]

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[Title of Court and Cause.]

### OPINION.

Three corporations (Alameda, Hawley, Pacific) sue the defendant collector to recover income taxes paid by Alameda for the year 1922. Each of them made return, but only Alameda was subject to and paid taxes. In 1924, they joined in an application for refund, on the ground that they were affiliated and entitled to make consolidated return upon which no taxes would have been due, which application was denied.

No objection to parties has been made. The Revenue Act of 1921, Section 240, provides that corporations which are affiliated within its meaning, may make separate or consolidated returns for 1922 and thereafter, whichever method elected to be continued unless the Commissioner permits otherwise;



and that "corporations shall be deemed to be affiliated (1)" (insert remainder of Sec. C sed section).

The object of the statute is taxation in proportion to net income, equality between taxpayers, and to that end to look through the corporate entities to ascertain the real taxpayer; and if the latter substantially owns or controls several corporate enterprises, to tax him only upon the net income he receives from all. With this object in mind, it seems clear that the control contemplated by the statute, is not mere authority but is beneficial interest, an interest in the taxpayer which would subject him to taxes and payment, and the burden of which would be lessened by consolidated returns. The benefit of the statute extends to him on whom is the hazard of the several enterprises. There is none such here. [21]

These are "family corporations" wherein all the Hawley stock was owned by the Hawley family and the Hawley corporation owned all the Pacific stock and 75% of the Alameda stock.

The remaining 25% of Alameda was owned by the Meek corporation, and Stuart Hawley, president of the plaintiffs managed the Meek by power of attorney from most of its stockholders.

It is clear that 75% of Alameda stock is not "substantially all" within the statute or otherwise.

And managerial authority of Meek by the president of plaintiffs, confers upon plaintiffs no beneficial interest in the other 25% of Alameda stock, nor hazard, nor liability in respect to taxes affect-

ing its owner. Hence was not that "control" of said 25% of Alameda which the statute contemplates, nor within the statute were plaintiffs affiliated.

If this be not correct, then several corporations without mutuality of interest save a common agent or manager could claim the benefit of the statute. In 1922 the corporations plaintiff elected to make separate returns, and have no right to recover taxes paid on that basis. It may be that in 1924 the Commissioner could have permitted amendment to consolidate the 1922 returns. If so, the power is discretionary only. He did not exercise it. The taxes were not "erroneously or illegally assessed or collected" and the court has no authority to in effect do what the Commissioner refused to do. Moreover, in assessment, collection and payment into the public treasury, the defendant collector was wholly without fault.

It follows that he cannot be subjected to the personal judgment to reimburse plaintiffs for their failure in tactics, which is sought in this action. The principle of *Smietanka's Case*, 257 U. S. 1, forbids, as does the general law of agents, representatives, officers, and like cases. See, also, *Fox vs. Edwards*, 287 Fed. 669.

That Section 1318 of said Revenue Act permits recovery of taxes "erroneously or illegally assessed or collected" regardless [22] of protest, does not serve to impliedly repeal these just principles, even if Congress has power to thus mulct an innocent collector for a taxpayer's default.

Judgment accordingly.

Defendant may present brief findings of ultimate facts in issue.

May 7, '28.

BOURQUIN, J.

[Endorsed]: Filed May 7, 1928. [23]

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[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW.

This cause came on regularly for trial on the 1st day of May, 1928, before the Court sitting without a jury, a trial by jury having been waived by written stipulation of the parties hereto, plaintiffs appearing by Dana Latham, Esq., their attorney, and the defendant appearing by Geo. J. Hatfield, Esq., United States Attorney for the Northern District of California, and Challis M. Carpenter, Esq., Assistant United States Attorney for said District, and evidence both oral and documentary having been received and the Court having fully considered the same, hereby makes the following findings of facts:

I.

The Court finds that at all times during the calendar year 1922, the plaintiff Alameda Investment Company had an authorized and outstanding capital stock of \$500,000.00, divided into two thousand five hundred shares of the par value of \$200.00 each, but it is not true that all of the said capital

stock was owned or controlled by Stuart S. Hawley or that substantially all of such capital stock was so owned or controlled by said Stuart S. Hawley.

## II.

The Court finds that neither plaintiff Hawley Investment Company nor Stuart S. Hawley, nor both together, owned directly or controlled through closely affiliated interests or by a nominee or nominees substantially all of the stock of the said plaintiff Alameda Investment Company.

## III.

That at all times during the calendar year 1922, said [24] Stuart S. Hawley was also president and general manager and in active management and control of the affairs of the plaintiff Hawley Investment Company and said Stuart S. Hawley owned or controlled all the authorized and outstanding capital stock of said corporation consisting of 2,500 shares of the par value of \$100.00 each.

## IV.

That during the calendar year 1922, said Stuart S. Hawley was the president and general manager and in active control of the plaintiff Pacific Nash Motor Company, and said Stuart S. Hawley controlled all the authorized and outstanding capital stock of said corporation consisting of 3,500 shares of the par value of \$100.00 each.

## V.

The Court finds that substantially all the stock of the Pacific Nash Motor Company was owned

throughout the calendar year 1922 by the Hawley Investment Company.

#### VI.

That it is not true that all or substantially all of the stock of the plaintiff Alameda Investment Company, plaintiff Hawley Investment Company and plaintiff Pacific Nash Motor Company, was owned by the same interests, to wit, said Stuart S. Hawley, and it is not true that plaintiff Alameda Investment Company was affiliated with said corporations during all of the calendar year 1922, as provided by Section 240 of the Revenue Act of 1921, or entitled to file a consolidated return of income or to have its income tax liability computed upon the income of said three corporations plaintiff as a unit.

#### VII.

The Court finds that the defendant collected said [25] tax from said plaintiff Alameda Investment Company, but it is not true that said collection was made erroneously or illegally in any respect whatsoever. It is not true that the defendant is indebted to said plaintiffs in the sum of \$15,087.72, or any other sum.

#### CONCLUSION OF LAW.

As conclusion of law from the foregoing facts the Court determines that plaintiffs are not entitled to judgment against the defendant herein and that said defendant should recover his costs of suit. Let judgment be entered accordingly.

Dated: July 20, 1928.

BOURQUIN,  
United States District Judge.

[Endorsed]: Filed July 24th, 1928. [26]

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In the Southern Division of the United States District Court for the Northern District of California.

No. 17,765.

ALAMEDA INVESTMENT COMPANY, a Corporation, HAWLEY INVESTMENT COMPANY, a Corporation, PACIFIC NASH MOTOR COMPANY, a Corporation,  
Plaintiffs,

vs.

JOHN P. McLAUGHLIN, Collector of Internal Revenue for the First District of California,  
Defendant.

### JUDGMENT ON FINDINGS.

This cause having come on regularly for trial on the 1st day of May, 1928, before the Court sitting without a jury, a trial by jury having been waived by written stipulation filed; Dana Latham, Esq., appearing as attorney for plaintiffs, and C. M. Carpenter, Esq., Assistant United States Attorney appearing as attorney for defendant, and the trial having been proceeded with and oral and documentary evidence on behalf of the respective parties having been introduced and closed, and the cause

having been submitted to the Court for consideration and decision, and the Court, after due deliberation having rendered its decision and filed its findings and ordered that judgment be entered in favor of defendant in accordance with said findings:

Now, therefore, by virtue of the law and by reason of the findings aforesaid, it is considered by the Court that plaintiffs take nothing by this action; that defendant go hereof without day; and that said defendant do have and recover of and from said plaintiffs his costs herein expended taxed at \$23.50.

Judgment entered July 24th, 1928.

WALTER B. MALING,  
Clerk. [27]

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[Title of Court and Cause.]

#### ENGROSSED BILL OF EXCEPTIONS.

BE IT REMEMBERED, That on the first day of May, 1928, the above-entitled cause came on for trial before this Court, Honorable GEORGE M. BOURQUIN presiding, the Court sitting without a jury, trial by jury having been waived in writing by counsel for the respective parties, a true copy of said stipulation being as follows:

“In the District Court of the United States, in and for the Southern Division of the Northern District of California, Second Division.

LAW—No. 17,765.

ALAMEDA INVESTMENT COMPANY, a Corporation,  
HAWLEY INVESTMENT COMPANY, a Corporation,  
PACIFIC NASH MOTOR COMPANY, a Corporation,  
Plaintiffs,

vs.

JOHN P. McLAUGHLIN, Collector of Internal Revenue for the First District of California,  
Defendant.

It is hereby stipulated by and between the parties hereto, through their respective attorneys, Thornton Wilson, Esq., of Oakland, California, and Messrs. Miller, Chevalier & Latham, Los Angeles, California, attorneys for plaintiffs, and George J. Hatfield, Esq., United States Attorney for the Northern District of California, for the defendant, that trial by jury be waived.

THORNTON WILSON,  
MILLER, CHEVALIER & LATHAM,  
By DANA LATHAM,  
Attorneys for Plaintiff. [28]

GEORGE J. HATFIELD,  
United States Attorney for the Northern District of California,

Attorney for Defendant.



[Endorsed]: Filed March 29, 1928. Walter B. Maling, Clerk. (Signed) A. C. Aurich, Deputy Clerk."

In the trial, the following proceedings were had and the following testimony given:

Dana Latham, appearing for the plaintiffs, and Messrs. George J. Hatfield, United States Attorney for the Northern District of California, and C. M. Carpenter, Assistant United States Attorney for the same district, appearing for the defendant.

Mr. Dana Latham made an opening statement to the Court on behalf of the plaintiffs and Mr. C. M. Carpenter waived an opening statement in behalf of the defendant, and thereupon the following proceedings were had and evidence and testimony, oral and documentary, were introduced in evidence on behalf of plaintiffs and on behalf of defendant, as follows:

#### STIPULATION.

The plaintiff offered and read into evidence the following stipulation as to certain facts which had been agreed to by both parties:

The correct operating income and losses for the three parties plaintiff for the year 1922, considered separately, are as follows:

Hawley Investment Company, Loss. . . .	\$ 36,284.28
Pacific Nash Motor Company, Loss. . . .	228,626.42
Alameda Investment Company, Gain. . . .	120,701.76
Net operating loss of all three companies combined, assuming they are to be combined . . . . .	\$144,208.94

The Commissioner of Internal Revenue has accepted the consolidated returns for the calendar year 1922, including the Hawley Investment Company and Pacific Nash Motor Company as affiliated, but has denied the right of Alameda Investment Company to be so included among the affiliated companies.

Throughout the year 1922, Hawley Investment Company owned or controlled substantially all of the stock of Pacific Nash Motor Company.

Throughout the year 1922, Stuart S. Hawley, individually owned or controlled substantially all of the stock of Hawley Investment Company.

Throughout the year 1922, the issued and outstanding stock of H. W. Meek Estate, Inc., was owned as follows:

Harriet W. Meek.....2,499 Shares  
Harriet Meek Hawley, wife of Stuart

S. Hawley .....833 $\frac{1}{3}$  Shares  
Gladys M. Volkman.....833 $\frac{1}{3}$  Shares  
W. H. Meek .....833 $\frac{1}{3}$  Shares  
the latter three being children of

Harriet W. Meek,  
Stuart S. Hawley....1 share, Directors qualifying.

Assuming that the contract of December 1, 1920, between the Meek Estate and the Hawley Investment Company to be introduced in evidence does not constitute a sale to Meek Estate of any stock of Alameda Investment Company, and also assuming that the contract was not actually consummated and the stock was not purchased at any time prior to December 31, 1922, it is stipulated that through-

out the year 1922 the stock of Alameda Investment was owned as follows:

Hawley Investment Company.....	1,638.24	Shares
[30]		
Stuart S. Hawley, personally.....	200	Shares
C. C. Adams.....	36.76	Shares
H. W. Meek Estate, Inc.....	625	Shares
		<hr/>
Total.....	2,500	Shares

Assuming the Hawley Investment Company to have sold, as a result of this contract of December 1, 1920, six hundred twenty-five additional of its shares of Alameda Investment Company to H. W. Meek Estate, Inc., on December 1, 1920, then the ownership of Alameda Investment Company throughout the year 1922 was as follows:

Hawley Investment Company,.....	1,013.24	Shares
Stuart S. Hawley, personally.....	200	Shares
C. C. Adams .....	36.76	Shares
H. W. Meek Estate, Inc.....	1,250	Shares
		<hr/>
Total.....	2,500	Shares

It is also agreed between the parties that the amount alleged in Paragraph 10 of the complaint herein, of \$4,455.42, representing the second installment of income tax in question, should be \$4,555.42.

This correction does not change the total amount claimed by plaintiffs.

The plaintiffs thereupon introduced on behalf of the plaintiffs and read into the evidence without objection the deposition of Harriet W. Meek, a witness produced in behalf of plaintiffs, taken before

E. Louvau, a notary public in and for the County of Alameda, State of California, on September 10, 1927, at Hotel Oakland, Oakland, California, pursuant to stipulation duly entered into between the parties, Messrs. Dana Latham and Thornton Wilson appearing for the plaintiffs, and Messrs. C. M. Carpenter, Assistant United States Attorney, and A. George Bouchard, Special Attorney, Bureau of Internal Revenue, appearing for [31] the defendant.

#### DEPOSITION OF HARRIET W. MEEK, FOR PLAINTIFFS.

HARRIET W. MEEK, called as a witness for the plaintiffs, being first duly sworn, testified as follows:

My name is Harriet W. Meek. I reside at the Hotel Oakland, Oakland, California. I will be 71 years of age next week. I am the widow of Harry W. Meek who died January 21, 1910.

Prior to coming to Hotel Oakland, I lived on the ranch in San Lorenzo, and lived there since 1884.

Prior to the date of my husband's death in 1910, I had separate property which was managed for me by my husband. Prior to the death of my husband in 1910, I had absolutely no experience in business affairs, and all of my affairs had been handled by Mr. Meek.

I have three children: William Harold Meek, Mrs. Stuart Hawley, and Mrs. William Volkman. My son Harold was 25 years old at the death of Mr. Meek, in 1910. At that time he was taking

(Deposition of Harriet W. Meek.)

charge of the ranch and since 1910 he has been the manager of the ranch. He has never resided in Oakland, and to my knowledge has no experience in the making or handling of investments. I do not consider him qualified to handle securities, including bonds, mortgages or real estate, but consider him limited, by qualifications, to the management of the ranch.

Neither one of my daughters, Mrs. Hawley or Mrs. Volkman, have had any business experience. Each of them has children.

I do not know what estate Mr. Meek left on his death, but it was divided between me and the children. [32] Mr. Hawley, my son-in-law, took charge of Mr. Meek's property after his death in 1910.

I do not know whether a corporation called H. W. Meek Estate, Inc., was formed after the death of Mr. Meek. I do not know whether I owned, during the year 1922, any stock in that corporation. I think I was an officer in that corporation, but I do not remember what it was. I was President. I do not know whether I was a Director. I never attended any stockholders' meeting during 1922 or prior thereto. I never attended any Directors' meetings. I never directed any of its business affairs. I never drew a salary from the corporation. Mr. Hawley handled all my affairs since the death of Mr. Meek.

If I owned any stock in H. W. Meek Estate, Inc., during the year 1922 or prior thereto, it was voted

(Deposition of Harriet W. Meek.)

or handled for me by Mr. Hawley. Just prior to the death of my husband in 1910, my husband told me he had perfect confidence in Mr. Hawley and expected him to look after my affairs for me. I desired Mr. Hawley to do this work rather than my son Harold, because my son Harold had had no experience in that direction and was not qualified.

I maintain checking accounts in Oakland banks. I don't think that during 1922 or prior thereto, that I ever drew any checks on my accounts. Mr. Hawley drew all of my checks. He does now and did in 1922 pay all my bills at the Oakland Hotel. I don't know how much money I have in the bank to-day. I never knew during the year 1922. I never gave any instructions to Mr. Hawley as to what he should do with my stock in Meek Estate, Inc., if I owned any.

The offices of Meek Estate, Inc., are located in [33] Mr. Hawley's offices. I think he handled all of the affairs of the Estate through his individual office.

In 1922 I maintained a safety deposit box in the Central Bank of Oakland. Mr. Hawley is the only one who has access to the box besides myself. I do not have to accompany him. I sometimes visit my safety deposit box to draw out anything in the line of jewelry or anything I need. I never visited it during 1922 or prior or subsequent thereto for the purpose of examining my securities. I was interested only in my personal effects.

(Deposition of Harriet W. Meek.)

I presume the H. W. Meek Estate, Inc., was incorporated at Mr. Hawley's suggestion. The property consisted of real estate in San Lorenzo and different places which Mr. Meek left on his death in 1910. I signed a power of attorney authorizing Stuart S. Hawley to handle my affairs.

Thereupon, plaintiffs introduced and read into the evidence, without objection, the original of a power of attorney, bearing date July 1, 1920, signed by Harriet W. Meek, and directed to Stuart S. Hawley, in words and figures as follows:

#### POWER OF ATTORNEY.

General.

KNOW ALL MEN BY THESE PRESENTS: That I, HARRIET W. MEEK, of the County of Alameda, State of California, have made, constituted and appointed, and by these presents do hereby make, constitute and appoint STUART S. HAWLEY, of the City of Oakland, County of Alameda, State of California, my true and lawful attorney for me and in my name, place and stead, and for my use and benefit to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me; and have, use, and take all lawful ways and means in my name, or otherwise, for the recovery thereof, by legal process, and to compromise and agree for the same, and grant ac-

quittances or other sufficient discharges for the same, and for me, and in my name to make, seal and deliver the same; to bargain, contract, agree for, purchase, receive and [34] take lands, tenements, hereditaments, and accept the seizin and possession of all lands, and all deeds and other assurances in law therefor; and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions, and under such covenants, as he shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, merchandise, choses in action, and other property in possession or in action; and to make, do and transact all and every kind of business of what nature and kind soever, and, also, for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing, of whatever kind and nature as may be necessary and proper in the premises.

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as I might or could do if I personally present, hereby ratifying



(Deposition of Harriet W. Meek.)

and confirming all that said attorney shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this first day of July, A. D. One Thousand Nine Hundred and Twenty.

(Signed) HARRIET W. MEEK. (Seal)

Signed, sealed and delivered in the presence of

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State of California,  
County of Alameda,—ss.

On this first day of July, A. D. one thousand nine hundred and twenty, before me, Ada P. Tychsen, a notary public, in and for the said County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Harriet W. Meek, known to me to be the person described in and whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] (Signed) ADA P. TYCHSEN,  
Notary Public, in and for the Said County of Alameda, State of California. [35]

Testimony of HARRIET W. MEEK resumed:

During the year 1922 and subsequent and prior thereto, I never exercised any control over any of the property owned by me. During the year 1922

(Testimony of Stuart S. Hawley.)

Mr. Hawley, the same individual named in the Power of Attorney, handled all of my affairs.

No questions were asked the witness, Harriet W. Meek, on cross-examination.

### TESTIMONY OF STUART S. HAWLEY, FOR PLAINTIFFS.

STUART S. HAWLEY, called as a witness on behalf of plaintiffs, being first duly sworn, testified:

My name is Stuart S. Hawley. I reside in Piedmont, California. I am president of Hawley Investment Company, Pacific Nash Motor Company, and Alameda Investment Company, and am vice-president of H. W. Meek Estate, Inc. The offices of these four corporations are located in the Syndicate Building, Oakland, California. The books and records of these four corporations are kept in that office. Besides myself, there was one other common officer for all of these corporations during the year 1922, namely the secretary. I signed all the checks of all four corporations during 1922. The four companies have had these two common officers ever since they were incorporated. The business of each of these companies during the year 1922 was as follows:

Hawley Investment Company is a holding corporation. Meek Estate, Inc., is a holding corporation. Pacific Nash Motor Company is engaged in the buying and selling of automobiles. Alameda

(Testimony of Stuart S. Hawley.)

Investment Company is engaged in the business of owning and buying real estate.

Hawley Investment Company was formed on or [36] about 1906, and constituted a transfer into corporate form of the major portion of the assets of the Hawley family. Alameda Investment Company was formed about 1909 for the purpose of handling real estate. Meek Estate, Inc., was formed about 1910 and represented the major portion of the holdings of the Meek family. Pacific Nash Motor Company was formed in 1907 or 1908 to engage in the automobile business.

These four companies, during the year 1922, had very close business and inter-company relations. The Hawley Investment Company was the guarantor and bailee of all the loans and business ventures of Meek Estate, Inc., and Alameda Investment Company, and had inter-company relations with those corporations. Meek Estate, Inc., acted in somewhat the same manner so far as its interest in Alameda Investment Company was concerned.

I gave a part of my time to each of these four corporations during the year 1922. I drew a salary from all of them during the year 1922.

During the year 1922 I was familiar with the affairs of Meek Estate, Inc., Mrs. Harriet W. Meek, the wife of Harry W. Meek, owned 50% of the stock of the corporation during 1922. It was after the death of Harry W. Meek that the Meek Estate, Inc., which took over his assets, was formed. The remaining one-half of the stock was owned by Mrs.

(Testimony of Stuart S. Hawley.)

Meek's three children: Mrs. Stuart S. Hawley, who is and was during the year 1922, my wife; Mrs. Gladys Volkman, and Mr. W. H. Meek, a son.

During the year 1922, Mrs. Hawley and Mrs. Volkman were housewives, and Mr. W. H. Meek, the son, was the [37] agricultural superintendent of the Meek Estate.

During the year 1922, Mrs. Harriet W. Meek was between 60 and 65 years of age. I was present on September 10, 1927, at the Oakland Hotel, Oakland, California, at which time the deposition of Harriet W. Meek was taken on behalf of plaintiffs for use in this case, and recall the questions and answers concerning my business relations with Mrs. Meek during 1922. The facts contained in that deposition were true and correct.

“Mr. LATHAM.—Q. Did you, as a matter of fact, during the year 1922 and prior and subsequent thereto, control and handle for her all of her business affairs?

A. (Mr. HAWLEY.) I did.

Mr. CARPENATER.—Just a minute. I object to the question and the word ‘control’ as being something that is described and designated by statute and regulations here. It is a mere conclusion.

The COURT.—It is rather so, but it can be inquired into further.

Mr. LATHAM.—Q. Did you hold, during the year 1922, an absolute power of attorney from Mrs.

(Testimony of Stuart S. Hawley.)

Meek authorizing you to represent here in all matters?

Mr. CARPENTER.—I object to the question on the ground that the power of attorney is the best evidence.

The COURT.—Yes.

Mr. LATHAM.—If your Honor please, the power of attorney is attached to Mrs. Meek's deposition, which has been offered in evidence.

The COURT.—Proceed.

Mr. LATHAM.—Q. What was the occupation of your wife, Mrs. Stuart Hawley, during the year 1922?

A. Housewife. [38]

Q. Did you have any children at that time?

A. We did.

Q. Do you know whether or not Mrs. Hawley had any business experience? A. She did not.

Q. Do you know where her certificate of stock in the Meek Estate was located physically during the year 1922? A. Yes.

Mr. CARPENTER.—Objected to as immaterial.

The COURT.—He may answer briefly. Objection overruled.

Mr. CARPENTER.—Exception.

A. Yes, it was in my safe deposit box.

Mr. LATHAM.—Q. Do you know whether or not she ever had access to that stock certificate?

Mr. CARPENTER.—The same objection.

The COURT.—Overruled.

Mr. CARPENTER.—Exception.

(Testimony of Stuart S. Hawley.)

A. I don't know whether she had a right to go into the safe deposit box, or not, but I know she never has been in there."

Testimony of STUART S. HAWLEY, resumed:

A power of attorney authorizing me to transact all her business affairs has been given me by my wife, Mrs. Hawley. Although I made a diligent search for that power of attorney I have been unable to locate the original document and I believe it has been recorded. During the year 1922 and prior and subsequent thereto, I managed all of the business affairs of Mrs. Hawley. Mrs. Hawley filed a separate income tax return for the year 1922 which I prepared [39] and signed for her as the manager of her affairs.

The income tax return for the year 1922 which I prepared was signed for Mrs. Meek by me as the managed of her affairs.

I do not recall whether a dividend on the stock of Meek Estate, Inc., was declared during the year 1922. If it was I reported that dividend in the returns of Mrs. Hawley and Mrs. Meek.

I voted the stock of Mrs. Hawley and Mrs. Meek in the Meek Estate, Inc., during the year 1922 and prior and subsequent thereto. They have never voted their stock in Meek Estate, Inc. I have always voted their stock.

During the year 1922 the Directors of Meek Estate Inc. were members of the family. I believe Mrs. Meek has been President of the company since

(Testimony of Stuart S. Hawley.)

its formation and Mrs. Hawley also was a director but she never attended meetings.

I was a Director of Meek Estate, Inc., during the year 1922 and held a Director's qualifying share. I dictated all the business policies of Meek Estate, Inc. during 1922.

As President of Hawley Investment Company during 1920 I entered into a contract on behalf of that company with the Meek Estate, Inc., as of December 1, 1920. The document handed me is a contract covering an option to purchase between Hawley Investment Company and H. W. Meek Estate, Inc., dated December 1, 1920, and is the original document.

Plaintiffs thereupon introduced in evidence, without objection, said document, a copy of which is attached hereto as Plaintiffs' Exhibit 1, which reads in words and figures as follows: [40]

#### PLAINTIFFS' EXHIBIT No. 1.

THIS AGREEMENT, made and entered into between HAWLEY INVESTMENT COMPANY (a corporation) and H. W. MEEK ESTATE, INCORPORATED (a corporation), this 1st day of December, 1920;

#### WITNESSETH:

WHEREAS Alameda Investment Company, a corporation, has arranged to purchase as of December 1, 1920 all of the assets of the Hayward Investment Company, a corporation, and in payment therefor to issue to Hayward Investment Company Twelve Hundred and Fifty (1250) shares

of the capital stock of the Alameda Investment Company; and

WHEREAS the assets of the Hayward Investment Company are being purchased as of December 1, 1920 at a book valuation of \$325, 00.00; and.

WHEREAS the assets of the Alameda Investment Company as of December 1, 1920 are in the net amount of \$325,000.00, represented by a capital account of \$250,000.00 and a surplus account of \$75,000.00; and

WHEREAS after the purchase of the assets of the Hayward Investment Company by the Alameda Investment Company the Alameda Investment Company will have a capital of \$250,000.00, a capital reserve of \$250,000.00, and a surplus of \$150,000.00; and

WHEREAS the capital stock of the Alameda Investment Company prior to December 1, 1920, is all owned by the Hawley Investment Company and the capital stock of the Hayward Investment Company is owned one-half by the Hawley Investment Company and one-half by H. W. Meek, Estate, Incorporated; and

WHEREAS H. W. MEEK ESTATE, INCORPORATED desired to own one-half of the capital stock of the Alameda Investment Company after the above mentioned consolidation but has not the funds at this time to purchase the said stock but has some securities available and is the owner of a certain note from the Hawley Investment Company to it which is now due; and

WHEREAS it has been agreed between the Haw-



ley Investment Company and said Meek Estate that the said Meek Estate is to have an option from the Hawley Investment Company to purchase the said stock at an agreed price of \$260.00 a share, or a total consideration of \$162,500.00, provided it will turn over to said Hawley Investment Company the above mentioned note and the securities that it has available at this time with the understanding that said option shall run until December 31, 1922, and if the said option is not exercised that the said Hawley Investment Company will at that time repay to said Meek Estate the moneys and value of securities turned over to it either now or hereafter on account of this option, together with interest on such money and securities at the rate of six per cent; [41]

NOW, THEREFORE, IN CONSIDERATION of the sum of Ten dollars (\$10.00) paid to said Hawley Investment Company by said Meek Estate, the receipt whereof is hereby acknowledged, and of the mutual advantages to be obtained by each of the parties hereto, the Hawley Investment Company does hereby give and grant to said Meek Estate the right and option to purchase from it on December 31, 1922, Six Hundred and Twenty-five (625) shares of Alameda Investment Company stock for the total sum of One Hundred and Sixty-two Thousand Five Hundred Dollars (\$162,500.00) together with interest on such sum at the rate of six (6) percent per annum.

The terms and conditions of such option are as follows:

1st. The Meek Estate shall pay to said Hawley Investment Company the sum of Fifty-four Thousand Dollars (\$54,000.00) on account of such option by offsetting a debt of this amount now due from the Hawley Investment Company to the Meek Estate.

2nd. The Meek Estate shall deliver to the Hawley Investment Company Sixty-two Thousand Two Hundred Dollars (\$62,200.00) par value of Consolidated Electric Five Percent First Mortgage Bonds, which shall be accepted by the Hawley Investment Company on account of such option at the rate of \$700.00 per bond, or \$43,540.00, which shall leave a balance due on the option price of the Alameda Investment Company stock to be paid by the Meek Estate if it shall exercise its option to purchase of the sum of \$64,960.00, which sum shall bear interest at six per cent per annum.

3rd. In the event that said Meek Estate shall decide not to exercise this option the Hawley Investment Company obligates itself to return to said Meek Estate on December 31, 1922 in cash the sum of \$97, 540.00 which is being paid to it on account of said option price by said Meek Estate, together with interest on said sum at the rate of six (6) percent per annum, but the Meek Estate may not demand the payment of such money by the Hawley Investment Company until the expiration of its option.

4th. In the event that the Meek Estate has additional funds at any time between now and December 31, 1922 which it desires to pay on account of this option, it may turn these over to the Hawley

Investment Company and be credited with said sum so paid and in that event if the Meek Estate does not exercise its option the Hawley Investment Company also obligates itself to repay such moneys so paid over with interest at six percent on December 31, 1922.

5th. If the Meek Estate decides to exercise this option, the remaining unpaid balance on said purchase price shall be paid by it to the Hawley Investment Company on December 31, 1922.

6th. Any dividends declared on the Alameda Investment Co. stock covered by this option shall be turned over to said Meek Estate upon payment thereof, and in the event this option is not exercised the Meek Estate agrees to [42] repay the amount so received to the Hawley Investment Company. If this option is exercised, the dividends so received shall be retained by said Meek Estate as its own property and to offset the payments it has made and may make on account of said option price and the accruing interest on said option price.

7th. It is distinctly understood and agreed that there shall be no obligation on the Meek Estate to exercise this option on account of the fact that it has made or may make during the life of this option financial advances against the purchase price thereof, but that the fact of its having made these advances, the use of which the Hawley Investment Company obtains for two years, is one of the considerations to the Hawley Investment Company for granting this option. And it is further understood and agreed that if the Meek Estate does not exercise

this option, that the Hawley Investment Company shall not be called upon to repay the money so advanced until December 31, 1922. If this option is exercised title to the Six Hundred and Twenty-five (625) shares of Alameda Investment Company stock shall be transferred to the Meek Estate on December 31, 1922 or any time thereafter at its demand. If the option is not exercised the payments advanced herein shall be returned together with interest and the dividends, if any, received by the Meek Estate shall be paid over to the Hawley Investment Company so that the rights of the parties shall be restored as if this option had never existed or been in force and effect.

IN WITNESS WHEREOF the parties hereto, by their respective officers thereunto duly authorized, have caused their corporate names to be signed and their corporate seals to be hereunto affixed the day and year first above written.

HAWLEY INVESTMENT COMPANY.

By STUART S. HAWLEY, (Signed)  
President.

By E. H. MAIER, (Signed)  
Assistant Secretary.

[Hawley Investment Company Seal]

H. W. MEEK ESTATE, INCORPORATED.

By W. H. MEEK, (Signed)  
Vice-president.

By F. W. COOPER, (Signed)  
Secretary.

[H. W. Meek Estate Seal] [43]

(Testimony of Stuart S. Hawley.)

Testimony of STUART S. HAWLEY resumed:

I recall the circumstances surrounding the execution of the contract. During the year 1920 we had two investment and real estate companies, the Hayward Investment Company and Alameda Investment Company, each with the same amount of capital and net assets.

Hawley Investment Company and the Meek Estate each owned one-half of Hayward Investment Company, and Alameda Investment Company was owned by Hawley Investment Company. All of these companies had the same personnel and there was constant embarrassment on account of the difference in ownership. As a result, I felt it would be advisable to consolidate these two companies into one corporation. Two major assets of the Alameda Investment Company were of questionable value. Meek Estate, Inc., decided to maintain the same relative ownership in the consolidated company that it would have in the Hayward Investment Company. In a consolidation without change of ownership the consolidated company would be held three-fourths by Hawley Investment Company and one-fourth by Meek Estate, Inc. The Meek Estate, Inc., wished to acquire the second quarter, if the consolidation was made, so that their interest in the new company would be the same as their interest in the old company, the Hayward Investment Company. The financial condition of Meek

(Testimony of Stuart S. Hawley.)

Estate, Inc., was such that it was undesirable to make a large investment in a non-liquid security.

“The COURT.—What is the object of all this?

Mr. LATHAM.—I am showing what was done as to the sale of 25 per cent of stock of Alameda Investment Company to the Meek Estate. [44]

The COURT.—You have a written contract?

Mr. LATHAM.—I want to explain as briefly as possible the circumstances. He is just about through.

The COURT.—How can the circumstances affect the writing if the contract is in writing? However, proceed.”

Mr. HAWLEY.—(Resuming.) Meek Estate, Inc., was willing to enter into this consolidation if they were given the option of making this purchase for two years. So, in consideration of a loan of securities by them to Hawley Investment Company, Hawley Investment Company entered into this contract, giving the Meek Estate the option for two years to purchase this second 25 per cent interest in Alameda Investment Company.

Mr. C. C. Adams, a stockholder during the year 1922 in Alameda Investment Company, was a salesman, he never paid anything for this stock.

Mr. LATHAM.—Q. Did he ever vote his stock?

A. I don't know whether he voted it or not. If he did it was under instructions. The stock was always in our possession and never delivered.

Mr. CARPENTER.—I object to that and ask that it be stricken out.

(Testimony of Stuart S. Hawley.)

The COURT.—So far as the answer goes that he never voted the stock, it may stand. Otherwise, it is stricken out.

Mr. LATHAM.—Q. Who, if you know, voted during that year, the stock of Alameda Investment Company owned by Meek Estate?

A. I did.

Mr. CARPENTER.—I object to that question on [45] the ground that the records of Meek Estate, Inc., are the best evidence.

The COURT.—Sustained. Proceed.

Mr. LATHAM.—Q. Do you know who represented the Meek Estate at stockholders' meetings of Alameda Investment Company during 1922, assuming that there were such meetings?

A. I did.

Mr. LATHAM.—Q. Are you able to state, as a matter of fact, Mr. Hawley, who determined the disposition made by Meek Estate of its stock in Alameda Investment Company during the year 1922?

A. There was no disposition of the stock.

Mr. CARPENTER.—I object to that question on the ground that the record is the best evidence.

The COURT.—He says there was no disposition, so that does away with the question.

On cross-examination the witness, STUART S. HAWLEY, testified as follows:

The gross assets of the Meek Estate during the year 1922 were about two million dollars and in 1920 they were about the same.

(Testimony of Stuart S. Hawley.)

The two large assets of the Alameda Investment Company which were of doubtful value were a very large piece of business property in Oakland and one large ranch property in the northern part of the State. By "doubtful value" I mean doubtful when compared to the value carried on the books. The Citrus Farm was one of these assets. The Meek family did not consider the Citrus Farm to be an asset of doubtful value.

Mr. CARPENTER.—Q. Didn't you at any time state that the Meek Estate did not consider the transaction with [46] Hawley Investment Company a profitable one, for the reason that they did not think that the Citrus Farms Company was a profitable venture?

A. I did not state that. I stated that the assets were doubtful; the proportion of actual value as compared to book value was doubtful.

Q. The Meek people felt that way about it?

A. Yes. I did, as manager of the Meek Company."

Thereupon, the witness, STUART S. HAWLEY, was recalled for the plaintiffs, and on behalf of plaintiffs testified as follows:

"Mr. LATHAM.—Q. Mr. Hawley, referring to the contract of December 1, 1920, which you said was an option contract with reference to 625 shares of the stock of Alameda Investment Company, was that option exercised, do you know?

Mr. CARPENTER.—I object on the ground that the books of the company are the best evidence.



(Testimony of Stuart S. Hawley.)

The COURT.—I do not think so. If he knows it as a matter of fact whether the agreement was carried out, he may answer.

Mr. LATHAM.—Q. Was that exercised prior to December 31, 1922, if at all?

A. It was exercised on December 31, 1922.

Q. Between December 1, 1920, and December 31, 1922, was that 625 shares of stock of Alameda Investment Company, if you know, ever delivered to or voted by the Meek Estate?

Mr. CARPENTER.—I object to that question.

The COURT.—Objection is sustained. [47]

Mr. LATHAM.—Q. Mr. Hawley, do you recall the reference in the journal of both Meek Estate and Hawley Investment Company with reference to the contract of December 1, 1920?

A. I do.

Q. Have you any explanation to make relative to these entries?

Mr. CARPENTER.—I object to the question on the ground that the books are the best evidence. It has not been shown that this man kept the books.

The COURT.—They are pretty nearly the best evidence with respect to their contents. What do you mean by 'explain'?

Mr. LATHAM.—If your Honor please, this man is President of these corporations.

The COURT.—What do you mean by an explanation?

Mr. LATHAM.—Q. Do you know whether or not these entries represent facts?

(Testimony of Stuart S. Hawley.)

A. I do not.

Q. Did you ever see these entries on the books?

A. Not to my knowledge.

Q. Did you ever approve these entries as made?

A. I did not.

Q. Did you, as President of Hawley Investment Company, consider that that company was selling 25 per cent of its stock to Meek Estate—25 per cent of Alameda Investment Company stock to Meek Estate on December 1, 1920? A. I did not.

Mr. CARPENTER.—I object to that question on the ground that the record speaks for itself. [48]

The COURT.—The records may speak for themselves but for the sake of the record he may answer. Overruled. If not competent the Court will give it no consideration in arriving at its decision. Proceed, if anything further.”

#### TESTIMONY OF HARRIET MEEK HAWLEY, FOR PLAINTIFFS.

HARRIET MEEK HAWLEY, a witness called on behalf of the plaintiffs, being first duly sworn, testified on direct examination as follows:

I live at Piedmont, California, and am the wife of Stuart S. Hawley and the daughter of Harriet W. Meek. During the year 1922 I was a housewife, living at home.

During the year 1922 I was a stockholder of H. W. Meek Estate, Inc. I do not know how much stock I owned. The certificate was in Mr. Hawley's possession. I think I was a director during the

(Testimony of Harriet Meek Hawley.)

year 1922 in H. W. Meek Estate, Inc. I never attended a directors' or stockholders' meeting during 1922.

I had no other separate property during the year 1922. I have had very little business training. My husband managed my affairs during, prior, and subsequent to the year 1922.

I do not remember ever discussing the affairs of the Meek Estate, Inc. with him. My husband voted my stock in the corporation during 1922.

Mr. LATHAM.—Q. If you recall, did you ever execute an absolute general power of attorney to your husband to handle all of your affairs?

A. I did.

Q. Was that power of attorney, if you recall, in effect during 1922? [49]

Mr. CARPENTER.—I object to the question on the ground that it calls for the conclusion of the witness.

The COURT.—She may answer if she ever revoked.

Mr. LATHAM.—I withdraw the question.

Mr. LATHAM.—Q. Do you recall approximately, when you gave such a power of attorney, if you did?

A. I think it was in the first two years after our marriage."

Testimony of HARRIET MEEK HAWLEY continued:

I gave this power of attorney about seventeen or eighteen years ago. I never revoked the power

of attorney either prior to December 31, 1922, or up to the present time.

No questions on cross-examination were asked the witness.

Thereupon the plaintiffs rested their case.

Thereafter, the defendant introduced certain documentary evidence, without objection, as follows:

(a) A certified copy of a tentative corporate income tax return for 1922 filed by Alameda Investment Company, one of the plaintiffs, which was marked Defendant's Exhibit 2. (Said exhibit is hereby expressly referred to and made a part of this bill of exceptions; and in lieu of engrossing the same herein at length it is agreed that by order of the Court the said exhibit shall be transmitted by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals in connection with any appeal herein, to become a part of the record on appeal with the same effect as if fully set forth at length herein.) [50]

(b) Certified copy of a claim for refund for \$15,087.72 income tax for 1922, together with explanatory statement, which was marked Defendant's Exhibit 3. (Said exhibit is hereby expressly referred to and made a part of this bill of exceptions; and in lieu of engrossing the same herein at length it is agreed that by order of the Court the said exhibit shall be transmitted by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals in connection with any appeal herein, to become a part of the record on appeal

with the same effect as if fully set forth at length herein.)

(c) A letter addressed by the Commissioner of Internal Revenue to Hawley Investment Company, dated October 14, 1925, signed by H. B. Robinson, Assistant to the Commissioner, which was marked Defendant's Exhibit 4, reading as follows:

DEFENDANT'S EXHIBIT No. 4.

"TREASURY DEPARTMENT,  
Washington.

October 14, 1925.

IT:CR:Af.

OHM.

Hawley Investment Company,  
703 Syndicate Bldg.,  
Oakland, Calif.

Sirs: Reference is made to a conference held with your representative, Mr. J. Robert Sherrod, of Miller and Chevalier, and to briefs filed relative to the affiliations of your company, the Pacific Nash Motor Company, the Los Molinos Citrus Farms Company and the Alameda Investment Company, during the taxable years 1920, 1921 and 1922. [51]

After a careful consideration of the additional facts and evidence, presented, you are advised that the Hawley Investment Company, the Los Molinos Citrus Farms Company and the Pacific Nash Motor Company were affiliated with each other during the taxable year, 1920, and with the Alameda Investment Company from January 1, 1920 to Novem-

ber 30, 1920, within the purview of Section 240 of the Revenue Acts of 1918 and 1921. A consolidated return should, therefore, have been filed for this year, including the latter company for the eleven-months period specified, and a separate return by the Alameda Investment Company for the month of December.

During the taxable years 1921 and 1922 the Hawley Investment Company and the Pacific Nash Motor Company were affiliated and should have filed a consolidated income and profits tax return for the taxable year 1921. The Alameda Investment Company was not affiliated during these years and should have filed a separate return for each of these years. The consolidated income tax return filed by your corporation for the taxable year 1922 should, therefore, have included only the Pacific Nash Motor Company in addition to your corporation.

In the event that the returns indicated above should be needed in the audit of the case you will be notified by this office.

This ruling supersedes all previous rulings of the Bureau covering the affiliations of these companies for the years 1920, 1921 and 1922.

Respectfully,

C. R. NASH,

Assistant to the Commissioner.

By (Signed) H. B. ROBINSON,

Head of Division. [52]

## TESTIMONY OF F. W. COOPER, FOR DEFENDANT.

F. W. COOPER, a witness on behalf of defendant, being first duly sworn, testified on direct examination as follows:

I was subpoenaed with a *subpoena duces tecum* to bring certain books which I have with me. I was Secretary of the Meek Estate, Inc., for the year 1920 and for the year 1922, and during the same period for the other two parties plaintiff. I have with me the minutes of Meek Estate, for the year 1920.

There were not any minutes relative to the so-called option given by the Hawley Investment Company to Meek Estate. There was no meeting held by Meek Estate at that time. No meeting was ever held by Meek Estate, Inc., relative to that transaction.

I have the minutes for Hawley Investment Company. I don't think there were any minutes of that company relative to the option given by Hawley Investment Company to Meek Estate. I don't think Hawley Investment Company had any meeting at that time. There is no reference in the minutes of Alameda Investment Company to the option referred to.

Mr. CARPENTER.—Q. Will you produce the cash-book, Mr. Cooper, for the Meek Estate? You might as well bring the journal and ledger with you

(Testimony of F. W. Cooper.)

for each of the companies. Turn now to the Meek Estate cash-book, if you will, please.

A. The cash-book?

Q. Yes. A. Yes.

Q. Will you point out to us any entry in that cash-book relative to debits or credits concerning the contract of December 1, 1920, between the Hawley Investment [53] Company and the Meek Estate?

A. You mean advances that were made on account of the same?

Q. Either advances or debits.

A. I can get that better from the ledger.

Q. Whichever would be better for you. You might read the item that you have in that ledger now.

A. This is in the ledger. It was the cancellation of a debt of the Hawley Investment Company at that time, \$54,000.

Q. What is the date of that?

A. December 1, 1920.

Q. Is that \$54,000 even? A. Yes.

Q. What did that represent?

A. That was an advance to the Hawley Investment Company on account of this option.

Q. Well, I do not believe you understand me. Prior to this time there was a note existing for that amount, payable to the Meek Estate by the Hawley Investment Company. Is that correct?

A. Yes.

Q. And part of the purchase price for the shares



(Testimony of F. W. Cooper.)

of stock in the Alameda Investment Company, in which the Hawley Investment Company gave the Meek Estate the so-called option, it was stipulated that the cancellation of that note by the Meek Estate would be part of the purchase price, was it not?

A. No, that was part of the option.

Q. Part of the option?      A. Yes.

Q. That is the one that it refers to, is it not?

A. Yes.

Q. And the ledger shows the cancellation of that note in favor of the Hawley Investment Company?

A. Yes, that was part of the consideration.

Q. What is the next item that you have there in the ledger?

A. There is another account here that was opened at the time.

Q. I have in mind some Consolidated Electric bonds, if that will help you any.

A. I know the account. I know it is here. [54] I have an exact duplication of it in the Hawley books.

Q. Refer to the Hawley books.

A. It is an exact duplicate of the Meek Estate books.

Q. Do you know it is an exact duplicate?

A. Yes.

Q. Are you in a position to state that there is an entry in these books showing that the Meek Estate debited itself for the payment of certain consolidated bonds due the Hawley Investment Company as part of the consideration?      A. Yes.

(Testimony of F. W. Cooper.)

Q. Will you refer to the Hawley Investment Company books and find that item? There is a journal entry, I understand, under date of December 1, 1920.

A. I guess maybe I can get it from the journal. They are both there, although I cannot find them.

The COURT.—Mr. Witness, if you have to turn at random over a lot of books, we cannot wait for that. What is it you are looking for?

Mr. CARPENTER.—I want to prove by the books that an entry appears in the books of a certain date—I don't know the date—that is why I am so anxious to find it—that the Consolidated Electric bonds were debited. Have you got it?

A. Yes.

Q. Will you read the item?

A. H. W. Meek Estate debited and credit to the Hawley Investment Company \$1250 Alameda Investment Company \$162,500, and they gave as consideration for said option at said time a cancellation of the Hawley Investment Company note of \$54,000, turned over some Consolidated Electric bonds, \$42,540, and note of \$64,960. That was the open account.

Q. What date is that entry?

A. That is 12/1/1920.

Q. You are testifying now from what book?

A. This is the Hawley journal. [55]

Q. The Hawley Investment Company journal?

A. Yes.

(Testimony of F. W. Cooper.)

Q. Like entries will be found in the Meek Estate books, will they not?     A. Yes, just opposite that.

Q. There is one item there mentioned as "Note." What is that note?

A. That was the balance of the option.

Q. The balance of the purchase price, was it not, and the note was a promissory note from the Meek Estate to the Hawley Investment Company, \$64,960?     A. That is right.

Q. And carrying 6 per cent interest, and that note was the ordinary promissory note, was it not, in form?

A. There was not a note given on that; we carried it under our note accounts. That is why it says "note."

Q. At whose direction did you carry it that way, as note account?

A. Our inter-company accounts are all carried that way; we never had any notes between one company and another.

Q. You did not draw the note, but you considered it as being due without a note?

A. Yes, we carried it under our notes receivable.

Q. Will you turn to the cash-book of the Hawley Investment Company, showing the payments there were made on account of the last-mentioned note, note being for \$64,960?

A. There were payments made from time to time.

Q. I would like to find out when those payments were made.

(Testimony of F. W. Cooper.)

The COURT.—This seems to have been a computed transaction instead of an option.

Mr. CARPENTER.—That is the Government's contention.

Q. I think \$12,000 was paid in 1920, if that will help any.

A. There were payments made from time to time. I can run through the cash-book.

Q. To save time, I was wondering if you are sufficiently informed on it to be able to stipulate that \$12,960 was paid [56] on the note during the year 1921, and that the balance was paid in the year 1922.

Mr. LATHAM.—I am not informed on these facts; otherwise I would be glad to stipulate.

The COURT.—If you come in here with any books, your books ought to be in a shape that you can advise the Court or counsel. I can't see that it is very material as to specific date. It was all paid before the end of 1922, I assume?

Mr. LATHAM.—It was not, according to our information, your Honor. It went into 1923.

The COURT.—You say the option was executed December 31, 1920. The Court will not sit by while you are trying to locate items in the books. Proceed with the witness.

Mark T. Cole was the bookkeeper in 1920. E. M. Mosier is the wife of H. H. Mosier, who was Treasurer of Pacific Nash Motor Company. Mamie F. Simpson was the wife of C. J. Simpson.

(Testimony of F. W. Cooper.)

The work of Meek Estate was to handle and take care of the assets left by Mr. Meek and to engage in some real estate business. They bought several tracts.

On cross-examination, the witness F. W. COOPER testified as follows:

“Mr. LATHAM.—You did not make these entries in the books, yourself, Mr. Cooper?”

A. No, I did not.

Q. Will you turn to the journal of the Meek Estate for December, 1920, and find that note which was referred to by Mr. Carpenter?

The COURT.—Haven't these books any dates, Mr. Witness, so that they can be turned to?

A. Yes.

Mr. LATHAM.—Q. Do you find a note there which Mr. [57] Carpenter referred to?

A. Yes.

Q. Is there any description of that note appearing at the bottom thereof? If so, read it.

A. Option to purchase per agreement.

Q. Is there an exactly similar entry appearing under the same date, if you know, in the books, the journal of the Hawley Investment Company?

A. Yes.”

Thereupon the defendant rested and no further evidence was offered or taken, and plaintiffs moved the Court for a judgment on all the issues in their favor and for special findings, and the defendant made the same motion. Whereupon, the case was

taken as submitted after an argument on the motions had been made by each party.

Dated:

DANA LATHAM,  
MELVIN D. WILSON,  
Attorneys for Plaintiffs.  
GEO. J. HATFIELD,  
United States Attorney,  
For Defendant. [58]

STIPULATION RE APPROVAL OF BILL OF  
EXCEPTIONS.

It is hereby stipulated and agreed by and between the attorneys for the plaintiffs and defendant, that the foregoing bill of exceptions has been presented in time and that it be approved, allowed and settled by the Judge in the above-entitled court, as correct in all respects, and that the same shall be made a part of the record in said case and be the bill of exceptions therein, and that said bill of exceptions may be used by either parties plaintiff or defendant upon any appeal taken by either parties plaintiff or defendant.

Dated:

DANA LATHAM,  
MELVIN D. WILSON,  
Attorneys for Plaintiffs.  
GEO. J. HATFIELD,  
Attorney for Defendant. [59]

ORDER APPROVING AND SETTLING BILL  
OF EXCEPTIONS.

The foregoing bill of exceptions duly proposed and agreed upon by counsel for the respective parties is correct in all respects and is hereby approved, allowed, and settled and made a part of the record herein, and said bill of exceptions may be used by the parties plaintiff or defendant upon any appeal taken by either parties plaintiff or defendant.

Dated: October 1st, 1928.

BOURQUIN,  
United States District Judge.

[Endorsed]: Filed October 2d, 1928. [60]

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[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

NOW COME the plaintiffs in the above-entitled cause and file the following assignment of errors, upon which plaintiffs will rely upon their prosecution of appeal in the above-entitled cause from the decree made by this Honorable Court on the 24th day of July, 1928.

I. That the United States District Court for the Northern District of California, Southern Division, erred in ruling that the control contemplated by Section 240 of the Revenue Act of 1921 is the beneficial interest in corporate stock in question.

II. That the United States District Court for the Northern District of California, Southern Division, erred in that the control contemplated by Section 240 of the Revenue Act of 1921, is not present where: Stuart S. Hawley and his sisters owned all of the stock of Hawley Investment Company; Stuart S. Hawley and Hawley Investment Company owned 75% of the stock of Alameda Investment Company; Hawley Investment Company acted as banker for Alameda Investment Company, endorsed its notes, purchased its notes and contracts receivable; where both companies had the same offices, employees, directors and officers; where the 25% minority stock of Alameda Investment Company was owned by Meek Estate, Inc., all of whose stock was owned by the wife, mother-in-law, and brother-in-law of Stuart S. Hawley; where Stuart S. Hawley held powers of attorney from his wife and mother-in-law who owned two-thirds of the stock of Meek Estate, Inc.; where Stuart S. Hawley attended [61] to all the business of his wife and mother-in-law and voted their Meek Estate, Inc., stock; was the Vice-President of Meek Estate, Inc., and managed its business, and by proxies had voted the stock of Alameda Investment Company for many years.

III. That the United States District Court for the Northern District of California, Southern Division, erred in ruling that the Alameda Investment Company was not affiliated during the year 1922 with the Hawley Investment Company and the Pacific Nash Motor Company.



IV. That the United States District Court for the Northern District of California, Southern Division, erred in ruling that the Commissioner of Internal Revenue did not give permission for the plaintiffs to change their basis of reporting their taxable income for 1922 from the basis of separate returns to consolidated returns.

V. That the United States District Court for the Northern District of California, Southern Division, erred in ruling that plaintiffs were estopped from filing amended consolidated returns for 1922.

VI. That the United States District Court for the Northern District of California, Southern Division, erred in ruling that the payment of tax under protest is a condition precedent to the recovery of said tax.

VII. That the United States District Court for the Northern District of California, Southern Division, erred in ruling that Section 1014 of the Revenue Act of 1924 does not retroactively do away with any necessity for paying taxes under protest as a condition precedent to their recovery.

VIII. That the United States District Court for the [62] Northern District of California, Southern Division, erred in rendering judgment for the defendant as a matter of law.

IX. That the United States District Court for the Northern District of California, Southern Division, erred in denying plaintiffs permission to file proposed findings of fact.

WHEREFORE, the appellants pray that said decree be reversed and that said United States District Court for the Northern District of California, Southern Division, be ordered to enter a decree reversing the decision in said cause.

MILLER, CHEVALIER & LATHAM,

By DANA LATHAM,

Attorneys for Plaintiffs and Appellants.

Service of the within ——— by copy admitted this 13th day of Sept., 1928.

GEORGE J. HATFIELD,

Attorney for Defendant.

[Endorsed]: Filed Oct. 13, 1928. [63]

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[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Upon reading the petition for appeal of the plaintiffs and appellants, IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals for the Ninth Circuit, from the decree heretofore filed and entered herein, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the bond on appeal to be filed by plaintiffs be fixed at the sum of \$250.00 and the same act as a bond for cost on appeal.

Dated: October 13th, 1928.

FRANK H. RUDKIN,  
Judge.

[Endorsed]: Filed October 13th, 1928. [64]

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BOND ON APPEAL.

The Premium Charged for This Bond is \$10.00 Dollars Per Premium.

KNOW ALL MEN BY THESE PRESENTS, That we, Alameda Investment Company, a corporation, Hawley Investment Company, a corporation, Pacific Nash Motor Company, a corporation, as principals and Pacific Indemnity Company, a corporation created, organized and existing under and by virtue of the laws of the State of California, as sureties, are held and firmly bound unto John P. McLaughlin, Collector of Internal Revenue for the First District of California, in the full and just sum of two hundred fifty and 00/100 (\$250.00) dollars to be paid to the said John P. McLaughlin, Collector of Internal Revenue for the First District of California, certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of September, in the year of our Lord one thousand nine hundred and twenty-eight.

WHEREAS, lately at a District Court of the United States for the Northern District of California, Southern Division, in a suit depending in said court, between Alameda Investment Company, a corporation, Hawley Investment Company, a Corporation, Pacific Nash Motor Company, a Corporation, Plaintiffs, vs. John P. McLaughlin, Collector of Internal Revenue for the First District of California, defendant, a judgment was rendered against the said plaintiffs and the said plaintiffs, having obtained from said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said John P. McLaughlin, Collector of Internal Revenue for the First District of California, [65] defendant citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, that if the said Alameda Investment Company, a corporation, Hawley Investment Company, a corporation, Pacific Nash Motor Company, a corporation shall prosecute the appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

HAWLEY INVESTMENT COMPANY.

STUART S. HAWLEY, Pres.

ALAMEDA INVESTMENT COMPANY.

STUART S. HAWLEY, Pres.

PACIFIC NASH MOTOR COMPANY.

STUART S. HAWLEY, Pres.

By F. H. COOPER,

Secretary.

PACIFIC INDEMNITY COMPANY. (Seal)

By S. E. JACKSON,

Attorney-in-fact. (Seal)

State of California,

County of Alameda,—ss.

On this twenty-eighth day of September, in the year one thousand nine hundred and twenty-eight, before me, Ada P. Tychsen, a notary public in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Stuart S. Hawley, known to me to be the president, and F. W. Cooper, known to me to be the secretary, of the corporation, Hawley Investment Company, that executed the within instrument and the officers who [66] executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal]                                      ADA P. TYCHSEN,  
Notary Public in and for Said County of Alameda,  
State of California.

On this twenty-eighth day of September, in the year one thousand nine hundred and twenty-eight, before me, Ada P. Tychsen, a notary public in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Stuart S. Hawley, known to me to be the president, and F. W. Cooper, known to me to be the secretary, of the corporation, Alameda Investment Company, that executed the within instrument and the officers who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal]                                      ADA P. TYCHSEN,  
Notary Public in and for Said County of Alameda,  
State of California.

On this twenty-eighth day of September, in the year one thousand nine hundred and twenty-eight, before me, Ada P. Tychsen, a notary public in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Stuart S. Hawley, known to me to [67] be the president, and F. W. Cooper, known

to me to be the secretary, of the corporation, Pacific Nash Motor Company, that executed the within instrument and the officers who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal]                                      ADA P. TYCHSEN,  
Notary Public in and for Said County of Alameda, State of California.

In case of a breach of any condition thereof, this Court may, upon notice to them of not less than ten days, proceed summarily in the action, suit, case or proceeding in which the same was given to ascertain the amount which such sureties are bound to pay on account of such breach, and render judgment therefor against them and award execution therefor.

PACIFIC INDEMNITY COMPANY.

By S. E. JACKSON,

Attorney-in-fact.

State of California,

County of Alameda,—ss.

On this 26th day of September, in the year one thousand and nine hundred and twenty-eight, before me, Mabel J. Turner, a notary public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared S. E. Jackson, known to me to be the duly authorized attorney-in-fact of Pacific Indemnity Company,

and the same person whose name is subscribed to the within instrument as the attorney-in-fact of said company, and the [68] said S. E. Jackson acknowledged to me that he subscribed the name of Pacific Indemnity Company thereto as principal and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]                                      MABEL J. TURNER,  
Notary Public in and for Alameda County, State of  
California.

[Endorsed]: Filed October 13th, 1928.    [69]

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[Title of Court and Cause.]

**PRAECIPE FOR TRANSCRIPT OF RECORD.**

To the Clerk of the United States District Court  
for the Northern District of California, South-  
ern Division:

Please issue a certified transcript of record in the above-entitled case on appeal to the Circuit Court of Appeals for the Ninth Circuit, consisting of the following:

1. Bill of complaint.
2. Demurrer.
3. Order overruling demurrer.
4. Answer of defendant.
5. Stipulation waiving trial by jury.
6. Special findings on behalf of defendant.



7. Opinion of Court.
8. Judgment-roll.
9. Bill of exceptions on behalf of plaintiffs.
10. Assignment of error.
11. Order allowing appeal, and order fixing cost bond.
12. Cost bond.
13. Citation on appeal.
14. Praecipe.

MILLER, CHEVALIER & LATHAM,  
By MELVIN D. WILSON,  
Attorneys for Plaintiffs.

Service of the within praecipe by copy admitted this 13th day of October, 1928.

GEO. J. HATFIELD,  
Attorney for Defendant.

[Endorsed]: Filed October 13, 1928. [70]

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CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventy (70) pages, numbered from 1 to 70, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said court, and that the same

constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$31.10; that the said amount was paid by the plaintiff and that the original citation issued in said suit is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 27th day of December, A. D. 1928.

[Seal]                      WALTER B. MALING,  
Clerk United States District Court, Northern District of California. [71]

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#### CITATION ON APPEAL.

United States of America,—ss.

To JOHN P. McLAUGHLIN, Collector of Internal Revenue for the First Collection District of California, Defendant, and His Attorney, GEORGE J. HATFIELD, United States Attorney for the Northern District of California, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, on the — day of October, A. D. 1928, pursuant to an order allowing an appeal filed in the Clerk's office of the District Court of the United States, in and for the Northern District of Cali-

fornia, in that certain cause wherein Alameda Investment Company, Hawley Investment Company, and Pacific Nash Motor Company are plaintiffs, and John P. McLaughlin, Collector of Internal Revenue for the First Collection District of California, is defendant, and you are required to show cause, if any there be, why the order, judgment and decree in the said action mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable \_\_\_\_\_, United States Circuit Judge for the Northern District of California, this 13th day of October, A. D. 1928, and of the Independence of the United States, the one hundred and fifty-third.

FRANK H. RUDKIN,  
U. S. District Judge for the Northern District of  
California. [72]

Service of the within citation by copy admitted  
this 13th day of Oct., 1928.

GEO. J. HATFIELD,  
Attorney for Dft.

[Endorsed]: Citation. Filed Oct. 13, 1928.

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[Endorsed]: No. 5689. United States Circuit Court of Appeals for the Ninth Circuit. Alameda Investment Company, a Corporation, Hawley Investment Company, a Corporation, and Pacific Nash Motor Company, a Corporation, Appellants, vs. John P. McLaughlin, Collector of Internal

Revenue for the First District of California, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed January 14, 1929.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.